

## Minnesota Farmer Protection Law Upheld

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### Overview

During the farm debt crisis of the 1980s numerous states in the Midwest and Plains enacted law designed to provide legal protection to farmers from various types of economic harm that others caused them. Farmers are also particularly vulnerable to bad political choices. During the 1970s the federal government was encouraging farmers to leverage heavily to expand and plant “fence row to fence row.” Then the Carter Administration made bad economic choices and engaged in a Russian grain embargo. The economy suffered from stagflation and when the newly appointed Federal Reserve Chairman Paul Volcker announced he would “ring inflation out of the economy” by immediately and substantially raising interest rates in late 1979, farmers found themselves with collapsed collateral (land) values, increased debt payments and a decreased ability to continue financing farming operations.

As the 1980s wore on, the structure of agricultural production began changing at an increasing pace. The move was on towards contract production of agricultural production. It had started in the 1970s in the poultry industry but started expanding into hog production. Also, farm input and output markets began consolidating, largely because of lax enforcement of existing competition laws applicable to the agricultural industry. Farmers buy inputs from highly concentrated markets and sell into highly concentrated markets. They face “seller power” when it comes to purchasing inputs and “buyer power” as it relates to selling agricultural commodities.

The Minnesota legislature, in 1990, enacted a set of laws designed to provide economic protection for farmers producing agricultural commodities under contract. Recently, the U.S. Court of Appeals for the Eighth Circuit, in *Pitman Farms v. Kuehl Poultry, LLC, et al., No. 21-1113, 2022 U.S. App. LEXIS 25167 (8th Cir. Sept. 8, 2022)*, said the laws applied to a parent corporation of a subsidiary that had canceled several million dollars’ worth of poultry grower contracts.

The Minnesota Producer Protection Act – it’s the topic of today’s post.

### Background

In early 1988, the Minnesota Legislature directed the Minnesota Department of Agriculture (MDA) to put together a task force to study the issue of agricultural contract production and recommend to the legislature how it might provide additional legal and economic protection to contract growers. The MDA’s Final Report was issued in February of 1990. During the 1990 legislative session, the Minnesota legislature approved various economic protections for farmers based on the task force recommendations focusing particularly on parent liability. As signed into law, MN Stat. §17.93 provides as follows:

“Parent company liability. If an agricultural contractor is the subsidiary of another corporation, partnership, or association, the parent corporation, partnership or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the contractor fails to pay or perform according to the terms of the contract.”

In addition, MN Stat. §17.90 specified as follows:



“Producer” means a person who produces or causes to be produced an agricultural commodity in a quantity beyond the person’s own family use and: (1) is able to transfer title to another; or (2) provides management input for the production of an agricultural commodity.”

The MDA then prepared at “statement of need and reasonableness” (SONAR) to implement the new statutory provision. The SONAR referred to the legislation as the “Producer Protection Act” (PPA) and the MDA’s implementing rule (MN Rule 1572.0040) for MN Stat §17.93 which went into effect on March 4, 1991, read as follows:

“A corporation, partnership, sole proprietorship, or association that through ownership of capital stock, cumulative voting rights, voting trust agreements, or any other plan, agreement, or device, owns more than 50 percent of the common or preferred stock entitled to vote for directors of a subsidiary corporation or provides more than 50 percent of the management or control of a subsidiary is liable to a seller of agricultural commodities for any unpaid claim or contract performance claim of that subsidiary.”

During the same 1990 legislative session the Minnesota legislature approved and the governor signed into law MN Stat. §27.133. This new law stated as follows:

“Parent company liability. If a wholesale produce dealer is a subsidiary of another corporation, partnership, or association, the parent corporation, partnership, or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the wholesale produce dealer fails to pay or perform in according to the terms of the contract and this chapter.”

Concerning this provision, the legislature stated, “It is therefore declared to be the policy of the legislature that certain financial protection be afforded those who are producers on the farm...”.

Also, under both MN Stat. §17.93 and MN Stat. §27.133, “contractor” and “wholesale produce dealer” were defined as “persons” and “person” was to be applied to corporations, partnerships and other unincorporated associations.” *MN Stat. §665.44, sub. 7.*

### **Facts of *Pitman Farms v. Kuehl Poultry, LLC***

In 2017, the defendants entered into chicken production contracts with Prairie’s Best Farm, Inc. to grow chickens in exchange for monthly payments and bi-monthly bonus payments. In late 2017, Simply Essentials bought the assets of Prairie’s Best and assumed the grower contracts. Simply Essentials, incorporated in Delaware and headquartered in California, was the subsidiary of the plaintiff, Pitman Farms, which owned more than 50 percent of Simply Essentials. Shortly thereafter, the plaintiff bought Simply Essentials’ membership interests and became its sole owner. In 2019, Simply Essentials encountered financial trouble, ceased processing activities and notified the defendants that it was terminating the contracts effective three months later. The defendants’ demands for payment in excess of \$6 million from the plaintiff for breach of contract failed. Both parties sought a declaratory judgment concerning the application of the PPA to the contracts.

### **Trial Court Decision**

The plaintiff claimed that the PPA did not apply because the defendants were not “sellers” and, even if they were, the PPA didn’t apply because Simply Essentials was an LLC rather than a “corporation, partnership, or association. The plaintiff also asserted that the PPA’s parent company liability provisions didn’t apply to it because Delaware law applied, and that applying Minnesota law would violate the Dormant Commerce Clause. The defendant’s counterclaim made the opposite arguments.

The trial court ruled for the plaintiff, finding that the PPA did not apply by its terms because the defendants were not “sellers” and because Simply Essentials was an LLC rather than a “corporation, partnership, or association.”



## Eighth Circuit Opinion

On appeal, the appellate court unanimously reversed. The appellate court read the various statutes together to determine the legislature's purpose and intent. The appellate court noted that the parent company liability statute of MN Stat. §27.133, the PPA of §§17.90-17.98 and the MDA's implementing rule all arose from the same legislative session, addressed the same issue, and contained nearly identical language. Accordingly, the appellate court determined that the trial court should have looked to MN Stat. §27.133 when construing the meaning of "seller" contained in MN Stat. §17.93 and in MDA Rule 1572.0040. When the various provisions were taken together, the appellate court determined that "seller" can include "producer" under the PPA and the MDA's implementing regulation.

The appellate court also concluded that the trial court erred in finding that "seller" was limited to transferors of title. Because the defendants did not have title to the chickens and could not therefore transfer title, the trial court held that the PPA did not apply. The appellate court held that such a construction was plainly contrary to the legislature's intent in creating the PPA which was to provide financial protections to agricultural producers in general and not merely agricultural commodity sellers. Further, because the appellate court determined that "seller" included "producer," the defendants were covered by the PPA as providing management services in accordance with MN Stat. §17.90 (2) for the growing of the chickens under contract. In addition, the appellate court held that the growers were also "sellers" for purposes of the parent company liability provision of MN Stat. §27.133.

The plaintiff also asserted that "subsidiary of another corporation, partnership or association" contained in MN Stat. §17.93 and §27.133 meant that both the parent and the subsidiary had to be either a corporation, partnership or an association. The trial court agreed with this interpretation. The appellate court also agreed but pointed out that LLCs (which Simply Essentials was) did not exist in Minnesota when the PPA was enacted and, as such, the legislature had not purposefully excluded them from the statute. The appellate court also noted that an LLC had been found to be a "person" for purposes of the Minnesota Human Rights Act. That law defined "person" to include a partnership, association, or corporation. In addition, an unpublished decision of the Minnesota Court of Appeals had previously held that an LLC was an "association" for purposes of a Minnesota oil transportation statute. Thus, there was no apparent reason why the legislature would have singled out LLCs to not be covered under the parent company liability provisions of the PPA.

The appellate court also noted the strong public policy statement of the Minnesota legislature in enacting the PPA – to protect producers of agricultural commodities from economic harm due to parent business entities using their organizational form to avoid liability for their subsidiaries' actions.

## Conclusion

The farm debt crisis of the 1980's produced legislative efforts in numerous states to address the legal and economic plight of farmers. Over 30 years later, it's refreshing to see how one of those laws has worked to protect farmers under chicken production contracts. Other states without such protections for farmers should take note of the Eighth Circuit's opinion.

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